

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00407 SEP 21 1998

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

His records be corrected to reflect he declined to participate in the Survivor Benefit Plan (SBP) program at the time his name was placed on the Temporary Disability Retired List (TDRL).

APPLICANT CONTENDS THAT:

When he signed up for SBP coverage, his mental state and heavy medication prevented him from making the election he truly desired,

In support of his request, applicant provided his expanded comments, prepared jointly with his father; a copy of his election certificate and a statement from his father concurring with his request to terminate coverage under the SBP; and documentation associated with his retirement for disability. (Exhibit A)

STATEMENT OF FACTS:

The applicant elected insurable interest SBP coverage, naming his father as beneficiary, prior to being placed on the Temporary Disability Retired List (TDRL) effective 14 February 1974.

AIR FORCE EVALUATION:

The Retirees Services Division, AFPC/DPPTR, reviewed this application and found no indication that the applicant was mentally incompetent, unable to manage his affairs or unable to make a valid SBP decision at the time he was placed on the TDRL.

Public Law (PL) 92-425, which established the SBP, held that an SBP election was basically irrevocable and could not be changed after the member became entitled to retired pay. Until recent changes in the statute, insurable interest coverage could be changed only if the member married or acquired a child and converted to spouse and/or child coverage within the first year after gaining the new beneficiary. PL 103-337, 5 October 1994, allows participants to

arbitrarily terminate insurable interest coverage unless the beneficiary is the member's former spouse.

DPPTTR found no evidence of an Air Force error; however, they recommended partial relief be granted and that the applicant's records be corrected to show he requested insurable interest SBP costs and coverage be terminated under the provisions of PL 103-337, effective 1 November 1994. They further recommended the SBP debt from August 1992 to that date be waived.

The complete evaluation is at Exhibit C.

EXAMINER'S NOTE: AFPC/DPPTTR advised that in response to a 6 April 1998 statement from applicant and his father, applicant was administratively disenrolled under the provisions of PL 103-337, effective 1 May 1998. However, the debt still remains for the coverage between Aug 92 (when applicant's VA compensation exceeded his retired pay) until the date coverage was stopped. Applicant's request for a correction of records to show he never participated in the SBP program remains to be resolved by the AFBCMR.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

A copy of the Air Force evaluation was forwarded to the applicant on 27 October 1997 for review and comment within 30 days. As of this date, no response has been received by this office.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to-timely file.
3. Sufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. After careful review of the applicant's complete submission, we are not persuaded that the applicant was not aware of the conditions of his Survivor Benefit Plan (SBP) election at the time his name was placed on the Temporary Disability Retired List (TDRL). Inasmuch as he made an election for insurable interest coverage, naming his father as beneficiary, it is reasonable to assume that he had at least a basic understanding of the program. In addition, the final decision whether or not to participate in the program rested with the applicant. Therefore, we do not believe favorable consideration of the applicant's stated request would be appropriate on the basis of the evidence provided. Nevertheless, Public Law (PL) 103-337, effective 1 November 1994, authorized members participating in the Uniformed Services Survivor Benefit

Plan for an insurable interest beneficiary to voluntarily terminate participation. Therefore, to preclude any injustice to the applicant, we agree with the recommendation of the office of primary responsibility that applicant's records should be corrected to reflect termination of his SBP coverage under the provisions of PL 103-337 and that the SBP accrued between August 1992, when his VA compensation exceeded his retired pay, and the date of termination of the coverage be waived. Accordingly, we recommend that the records be corrected as indicated below.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that he requested insurable interest Survivor Benefit Plan costs and coverage be terminated under the provisions of Public Law 103-337, effective 1 November 1994; and, that competent authority waived the SBP debt accrued between August 1992 and November 1994.

The following members of the Board considered this application in Executive Session on 16 July 1998, under the provisions of AFI 36-2603:

Mr. Henry C. Saunders, Panel Chair
Mr. David C. Van Gasbeck, Member
Mrs. Barbara A. Westgate, Member

All members voted to correct the records, as recommended. The following documentary evidence was considered:

- Exhibit A. DD Form 149, dated 5 Feb 97, w/atchs.
- Exhibit B. Applicant's Master Personnel Records.
- Exhibit C. Letter, AFPC/DPPTTR, dated 9 Oct 97, w/atch.
- Exhibit D. Letter, SAF/MIBR, dated 27 Oct 97.

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HENRY C. SAUNDERS
Panel Chair